

Submission  
No 112

## INQUIRY INTO IMPACT OF THE REGULATORY FRAMEWORK FOR CANNABIS IN NEW SOUTH WALES

**Organisation:** NSW Users and AIDS Association (NUAA)

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# Submission to the *Inquiry into the impact of the regulatory framework for cannabis in New South Wales*

May 2024

The NSW Users and AIDS Association (NUAA) is a peer-based harm reduction organisation that represents people with living and lived experience of drug use in NSW. Our mission is to advance that health, human rights, and dignity of people with lived and living experience of drug use. We play a vital role in policy, AOD research and harm reduction service delivery across NSW.

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## **About NUAA**

The NSW Users and AIDS Association (NUAA) is a peer-based harm reduction organisation that represents people with living and lived experience of drug use in NSW. Our mission is to advance that health, human rights, and dignity of people with living and lived experience of drug use.

NUAA is primarily funded by the NSW Ministry of Health with additional project-specific funding from NSW Local Health Districts, research centres and donations.

We play a vital role in policy and AOD research. NUAA also provides a diverse range of harm reduction services including a fixed and postal needle and syringe program, including a take home naloxone program; clinical service, vein care, hepatitis C point of care testing and linkage to treatment; peer education, publications, and resources; DanceWize NSW – a peer education and harm reduction initiative operating at NSW music festivals and PeerLine a telephone peer support line.

Further information about NUAA and our programs and services is available on the NUAA website at [www.nuaa.org.au](http://www.nuaa.org.au)

## **Preparation of this submission**

The comments provided in this submission have been prepared by NUAA staff, on behalf of our community members.

## **NUAA Contact for this submission**

Policy and Advocacy Lead

# Submission

NUAA welcomes the opportunity to provide a submission to the Legislative Council for the **Inquiry into the impact of the regulatory framework for cannabis in NSW**. It is NUAA's overall position that the current cannabis legislative landscape continues to perpetuate harm to people who use illicit cannabis and patients receiving medical treatment with cannabis. NUAA calls for the legalisation of cannabis and the introduction of a regulated supply of cannabis to adults for personal use. Regulated access to non-medical cannabis would ensure that people who use non-prescribed cannabis are not unfairly penalised and end the harms caused by the criminalisation of non-medical cannabis use.

This submission details the impacts of the current regulatory framework for cannabis on consumers in NSW, with a focus on issues relating to ongoing criminalisation of personal use and possession, unregulated supply, stigmatisation of cannabis use, barriers to equitable access to medicinal cannabis and lack of workplace and driving protections for people who use medicinal cannabis.

## Summary of recommendations:

- Legalise the personal use and possession of cannabis to people over 18 to end the criminalisation of people who use cannabis and reduce the over policing and overcriminalisation of Aboriginal people;
- Consult with consumers to better understand and resolve barriers to access of medicinal cannabis. Consideration should be given to enabling product substitution, providing accessible information around bulk billing services and product availability and advocating for medicinal cannabis to be available on the Pharmaceutical Benefits Scheme;
- Reform to drug driving laws and testing. We support calls for drug driving laws to test for impairment as opposed to presence. Drug driving law reform should aim to uphold road safety and reduce undue penalties for people who may have THC in their system and not be impaired. At the minimum NSW should consider the Tasmanian approach that enables medical exemption for people with a medicinal cannabis prescription;
- Development of standards relating to medicinal cannabis use and workplace rights including clear restrictions on the appropriateness of workplace drug testing;
- Inclusion of a provision relating to the expungement of any personal-use criminal offences/records in the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023;
- Development and provision of an evidence-based harm reduction education campaign to increase community health literacy around cannabis use and address stigma to accompany cannabis regulatory reform.

## Terms of reference:

**(D) the impact of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime and the criminal justice system**

## Criminal Justice System

The current criminalisation of personal cannabis use, and possession continues to perpetuate harm to people who use illicit cannabis. Prohibitive and criminalised approaches to illicit drug use have repeatedly shown a failure to prevent drug use or reduce drug related death and instead, increase the number of people incarcerated for substance related offences.<sup>1</sup> People who use drugs may be deterred from accessing services owing to the threat of criminal punishment, or may be denied access to health care altogether.<sup>2</sup> The reliance on fines in diversion schemes for personal use/possession is inherently inequitable because they aren't means tested and therefore have disproportionate impacts on community members experiencing poverty. Moreover, the reliance on police discretion under the NSW Cannabis Cautioning Scheme and Early Drug Diversion Initiative (EDDI) has demonstrated uneven policing practices, particularly for Aboriginal adults, with research showing that 12% of Aboriginal adults with a small amount of cannabis were cautioned by NSW Police, compared to 44% of non-Aboriginal adults.<sup>3</sup> The legalisation of cannabis for adults for personal use/possession, alongside the expungement of all historical personal-use cannabis criminal records is of urgent priority to end the systemic harms associated with illicit cannabis use.

### Unregulated Supply

The absence of legal regulated cannabis for personal use puts people who use cannabis outside of the prescription only model at risk of criminalisation and increased uncertainty around quality of product from unregulated supply. The use of Plant Growth Regulators (PGRs) and other plant growth additives is also a significant concern for people accessing cannabis from an unregulated supply, as people are at risk of legitimate harm from exposure to unknown, harmful chemicals.

### Health System

Consumer access to medicinal cannabis telehealth consultations was highlighted as an important feature to enable access to medicinal cannabis for people in rural, regional, and remote areas, isolated consumers and consumers who are immobile and/or do not have access to any form of transportation. Despite this improvement, there remains barriers to access, including:

- **Prohibition of product substitution resulting in consumers having to bear increased administrative and financial burden when product is not available.** Consumers raised that the prohibition of product substitution means that they must go back and get another prescription for a product that is available. This is additional consultation/prescription cost. For people who can't afford to get another prescription they are forced to go without if the initial product prescribed is not available.
- **The system is confusing to navigate, hard for consumers to access and self-advocate.** Despite the expanded access enabled by telehealth, the system remains confusing at a consumer level. This includes a reliance on high consumer digital literacy to access and

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<sup>1</sup> A/HRC/54/53: Human rights challenges in addressing and countering all aspects of the world drug problem - Report of the Office of the United Nations High Commissioner for Human Right, 15 August 2023 < <https://www.ohchr.org/en/documents/thematic-reports/ahrc5453-human-rights-challenges-addressing-and-countering-all-aspects>>

<sup>2</sup> A/HRC/54/53: Human rights challenges in addressing and countering all aspects of the world drug problem - Report of the Office of the United Nations High Commissioner for Human Right, 15 August 2023 < <https://www.ohchr.org/en/documents/thematic-reports/ahrc5453-human-rights-challenges-addressing-and-countering-all-aspects>>

<sup>3</sup> Teperski A and Rahman S, June 2023, Why are Aboriginal adults less likely to receive cannabis cautions? NSW Bureau of Crime Statistics and Research < <https://www.bocsar.nsw.gov.au/Publications/CJB/CJB258-Report-Cannabis-cautioning-2023.pdf>>

understand the system, a reliance on self-research to understand available products and where to access doctors that bulk bill, unclear requirements for third party payments to order product, and inability to substitute product despite the medicinal cannabis industry expanding. The high level of bureaucracy and regulation contributes to a confusing system to navigate. These issues make it hard for some consumers to self-advocate and for others is a complete barrier to accessing medicinal cannabis.

- **The Pharmaceutical Benefits Scheme doesn't cover medicinal cannabis.** This means that the cost of medicinal cannabis can vary significantly depending on a person's illness, product requirement and the dosage.

## Road Safety

The need for drug driving law reform was a key concern for consumers. NSW Roadside Drug Testing (RDT) currently tests for the *presence* of any quantity/residue of THC in a person's oral fluid and does not enable an assessment of whether a person is drug impaired.<sup>4</sup> This is despite research suggesting that blood and oral fluid THC concentrations are relatively poor indicators for cannabis-THC-induced impairment, especially for 'regular' (weekly or more often) cannabis users.<sup>5</sup> NSW current approach to drug driving offences puts consumers who are prescribed medicinal cannabis containing THC at risk of losing their license and/or facing drug driving fines and subsequent criminalisation.

Consumers highlighted that the current legislative approach forces them to either forgo their medication, avoid driving or risk being penalised. These are all disagreeable options that increase experiences of stress and anxiety around accessing medical treatment and risk of penalisation – disproportionately so for people living outside of metropolitan cities, or in locations with poor public transport access and who rely on driving. Consumers call for reform to drug driving laws to test for impairment as opposed to presence to both align to improved road safety and reduce undue harm to people who may have THC in their system and are not in any state of impairment. At the minimum consumers asked for the establishment of a medical exemption for drug driving laws, like Tasmania - where it is prohibited to drive while having THC in your system unless the product was prescribed.<sup>6</sup>

## Employment

There is a lack of consistent guidance as to how medicinal cannabis is treated by employers, across industries. This coupled with the use of workplace drug testing that similarly only tests for presence of impairing drugs increases consumer stress around job stability and risk of dismissal. The Fair Work Act implies some protections for people prescribed cannabis for a physical or mental disability, however the lack of clear guidance on this puts people who use medicinal cannabis at increased risk of stigma and discrimination in the workplace. People who use medicinal cannabis

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<sup>4</sup> Quilter, J. and McNamara, L. (2017) "'Zero Tolerance' Drug Driving Laws in Australia: A Gap Between Rationale and Form?", *International Journal for Crime, Justice and Social Democracy*, 6(3), pp. 47-71. doi: 10.5204/ijcsd.v6i3.416.

<sup>5</sup> Danielle McCartney, Thomas R. Arkell, Christopher Irwin, Richard C. Kevin, Iain S. McGregor, Are blood and oral fluid  $\Delta^9$ -tetrahydrocannabinol (THC) and metabolite concentrations related to impairment? A meta-regression analysis, *Neuroscience & Biobehavioral Reviews*, Volume 134, 2022, 104433

<sup>6</sup> Medicinal cannabis information for patients and the general public, Tasmanian Government, Department of Health <<https://www.health.tas.gov.au/health-topics/medicines-and-poisons-regulation/medicinal-cannabis/medicinal-cannabis-information-patients-and-general-public#medicinal-cannabis-and-driving>>

call for state and/or federal standards around prescribed medicinal cannabis and workplace rights including clear restrictions on the appropriateness of workplace drug testing.

### **Young people**

The currently regulatory framework is not effective in reducing supply to people under 18. Results from the 2019 National Drug Strategy Household Survey found that illicit cannabis was the most commonly used drug in young people aged 14-24 in the 12 months before the survey.<sup>7</sup> NUAA supports a regulatory framework that includes age restrictions (18+) on the personal use and possession of cannabis, alongside greater investment in the provision of youth specific prevention and early intervention mechanisms, including harm reduction education campaigns for personal cannabis use and greater provision of mental health services.

### **(E) the impact of the regulatory framework for cannabis on Aboriginal, LGBTIQ+, regional, multicultural and lower socioeconomic communities**

#### **Aboriginal adults are disproportionately impacted by criminalisation of illicit cannabis**

Data shows that police in NSW pursue more than 80% of Indigenous people found with small amounts of cannabis through the courts, while non-Indigenous people are more likely to receive cautions.<sup>8</sup> Moreover, 92.85% of Indigenous Australians taken to court for cannabis possession charges were either found guilty by a judge or magistrate or entered a guilty plea.<sup>9</sup> Given that Aboriginal people make up 31% of the adult prison population in NSW and two-thirds of the youth detention population, it is urgent that legal frameworks that enable racist and discriminatory policing practices and contribute to overcriminalisation of Aboriginal people are reformed.<sup>10</sup> Any reform should aim to reduce discretionary policing powers to reduce risk of discriminatory practice and end criminalisation as a way to reduce contact between Aboriginal people and the criminal justice system.

#### **Regional and lower socioeconomic communities**

As discussed above, access to medicinal cannabis in regional locations has increased through availability of telehealth and the ability to receive product through the post. Additionally, concession pricing on medicinal cannabis for eligible patients has helped address financial barriers to medicinal access. Access could be further expanded through the inclusion of medicinal cannabis on the Pharmaceutical Benefits Scheme.

### **(F) alternative approaches to the regulatory framework for cannabis in other jurisdictions**

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<sup>7</sup> Australian Institute of Health and Welfare (2021) *Alcohol, tobacco and other drugs*, AIHW, Australian Government, accessed 14 May 2024.

<sup>8</sup> NSW police pursue 80% of Indigenous people caught with cannabis through courts, Michael McGowan and Christopher Knaus, 10 June 2020, The Guardian Australia accessed 14 May 2024 <<https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>>

<sup>9</sup> NSW police pursue 80% of Indigenous people caught with cannabis through courts, Michael McGowan and Christopher Knaus, 10 June 2020, The Guardian Australia accessed 14 May 2024 <<https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>>

<sup>10</sup> 'We should all be furious': Aboriginal people make up record 31% of adult prison population in NSW, Lorena Allam, The Guardian, accessed 14 May 2024 ['We should all be furious': Aboriginal people make up record 31% of adult prison population in NSW | Indigenous Australians | The Guardian](https://www.theguardian.com/australia-news/2024/may/14/we-should-all-be-furious-aboriginal-people-make-up-record-31-of-adult-prison-population-in-nsw)

NUAA calls for the complete legalisation and regulated supply of cannabis to adults for personal use to end the harms caused by criminalisation and diversionary schemes and better enable equitable access to safe supply of cannabis to all adults who use cannabis. Community members have highlighted that there are many alternative approaches in other jurisdictions that could guide improvements in NSW. These include but are not limited to:

- **Canada** – Provides legal and regulated access to cannabis for non-medical purposes. Community members commented on the effectiveness of this approach in turning around decades of entrenched stigma associated with cannabis use and reducing harm caused by prohibitive measures.
- **Australian Capital Territory** – ACT have legalised the personal possession, use and home-grown cultivation of cannabis (limit of two cannabis plants per person for personal consumption). Community members highlighted this model as a good first step towards ending criminalisation and prohibition of cannabis and moving towards legal and regulated supply for personal use.
- **Tasmania** – As discussed in the section on driving laws, Tasmania’s exemption for medicinal cannabis with THC has been highlighted as a priority reform option to address risk of penalisation for medicinal cannabis consumers because of the presence of THC being detected through current drug driving testing approaches.

### **(G) the provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023**

NUAA community members support the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 as a welcomed first step towards ending the criminalisation and reducing harms caused by the illicit cannabis market. Specific recommendations include:

- The Bill should include provisions regarding the expungement of any personal-use criminal records. NUAA’s position is that this should extend to all historical personal-use cannabis related offences. However, at the minimum the NSW Bill should include a similar clause to clause 16. Part VII Division 3 of the WA Misuse of Drugs Amendment (Lawful Personal Use of Cannabis) Bill 2024:
  - *If there is a CIN (Cannabis Infringement Notice) in effect on the day the amendments come into effect in relation to an adult, then the CIN ceases to have force so the offender does not have to comply with it or pay any fine in relation to it. This reflects the fact that the possession or use of cannabis or possession of drug paraphernalia for which a CIN was issued, would be lawful under the amendments to the Act when they come into effect.*<sup>11</sup>
- Schedule 1[4](c) - Should read cannabis flower, not cannabis leaf (or leaf/flower combo).

### **(F) any other related matters**

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<sup>11</sup> WA Misuse of Drugs Amendment (Lawful Personal Use of Cannabis) Bill 2024 Explanatory Memorandum < [EM 154-1.pdf \(parliament.wa.gov.au\)](#)>



**Invest in the development of evidence-based harm reduction education campaigns that have been co-designed with community members to accompany cannabis reform to build community health literacy and address stigma**

Community members have raised that there is a lack of evidence-based, non-stigmatising educational campaigns available regarding cannabis use for both medicinal use and personal use. Moreover, much of the messaging and education that is available is grounded in prohibitionist messaging. Given the increase in people accessing medicinal cannabis for treatment of health issues and considerations being given to moving towards the regulation of personal adult use of cannabis we urge the inquiry to consider the importance of investing in the development of evidence-based harm reduction educational campaigns that is designed with and accessible to all priority population groups.